

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟ ಬಿಲಿಂಗ್, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್, 3ನೇ ಕ್ರಾಸ್,
ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು- 560027

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA
Presided by Sri K PALAKSHAPPA
Adjudicating Officer
Date: 20th MAY 2020

Complaint No.	CMP/191024/0004100
Complainant	Ajeet Kumar Mall, Flat No.A11-502, Provident Harmony, Chokkanahalli Road, Bengaluru-560064
Opponent	Nitesh Housing Developers Pvt.Ltd., Nitesh Timesquare, 7 th Floor, No.8, M.G.Road, Begnaluru- 560001. The Present Address : NHDPL Properties PVT. LTD., No. 110, Level 1, Andrews Building, MG Road, Bengaluru – 560001.

“J U D G E M E N T”

1. Ajeet Kumar Mall, the Complainant filed this complaint bearing complaint no. CMP/191024/0004100 under Section 31 of RERA Act against the project ‘Nitesh Melbourne Park’ developed by “Nitesh Housing developers Pvt. Ltd.,” for the relief as sought in the complaint.
2. In pursuance of the notice issued by this authority, complainant has appeared in person and respondent also appeared through his representative.

Denu Palashew

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3. I have heard arguments of the complainant and posted for judgment.

4. The points that arise for consideration are:

- Whether the complainant is entitled for the relief as prayed in the complaint?
- If so, what is the order?

5. My answer to the above point is in the affirmative for the following

REASONS

6. This complaint has been filed by the complainant against the developer for refund of the amount of Rs.22,67,000/-. The complainant had paid said amount on 27/07/2014. The respondent has filed objection statement and also produced the agreement of sale. It is the case of the developer that the complainant has paid only token amount and failed to pay 20% of the total consideration within 20 days. He has submitted that as per terms of the booking form the respondent is entitled to deduct 10% of the amount with GST. Therefore, he prays for dismissal of this complaint.

7. I would say that the complainant has said for the refund of the amount based upon the letter correspondence between the complainant and the developer. The complainant has said in his complaint as under:

I booked a 2.5 BHK flat (Unit E0308) in Nitesh Melbourne Park project on 27-July-2014. The project was approved in April-2016 and the work started soon after. In June-2016, I was asked to pay 20% down-payment which I paid and the agreement was signed. Meanwhile, I got a offer from the builder that I could upgrade my

Done
20/08/2020

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2.5 BHK unit to 3BHK with the existing rate per sq ft. I made the differential payment and the new agreement was signed as per RERA on 29-June-2018. The project work stopped in Oct-18 and in March-19, the developer officially announced about exit from this project. I have been calling, sending email and going to their office to get back my money. But they are saying that they have no money to pay and they are talking to different developers to sell it off and then pay me the principal amount. Please help me get my money with compensation.

Relief Sought from RERA : Principal payment with interest as per RERA rules

8. It is the case of the complainant that the developer has executed agreement of sale on 18/07/2016 in respect of flat bearing No. E-0308 measuring 1446 square feet in the third floor of block E of Nitesh Melbourne Park project. Further the developer has taken defense in his objection statement as under:

The complainant had booked a flat bearing No. E-0308 at Nitesh Melbourne Park Project of the respondent. The parties have executed agreement to sell dated 18/07/2016 and construction agreement dated 18/07/2016 respectively. The parties are governed by the terms and conditions agreed therein. In case of any dispute between the parties, the dispute resolution should happen by Arbitration as agreed by the parties in the said documents. The complainant should have opted for arbitration. On this ground the complaint is not maintainable. The copies of Agreement to sell and construction agreements are produced herewith.

It is submitted that as per clause 4 of the construction agreement, the date agreed between the parties for the delivery of the possession of flat is 48 months from the date of execution of construction agreement with a grace period of additional six months. Accordingly the respondent is under the obligation to handover the possession of the flat to the complainant within

Devi
20/07/2019

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June 2021. Hence there is no cause of action for the complaint and the complaint is liable to be dismissed on this ground itself.

It is further submitted that the complainant has not paid the entire cost of the flat as agreed in the agreement to sell and construction agreement referred above. As per clause 3.4 and 3.5 of the construction agreement, the respondent can demand the arrears of the due from the complainant and in the event of failure to pay the arrears of due by the complainant, the respondent is entitled to withhold 18% of the amount equivalent to amount received till such date and can refund the balance within a stipulated period or on resale of unit, whoever is later. Hence on this ground, the complainant is not entitled to for the refund of the balance amount till such time.

It is submitted that the respondent has been trying their best to complete the construction of the project and handover the respective flats to the allottee including complainant within the agreed period of time. For this reason the complaint should not be allowed and the respondent need not be directed to refund the amount deposited. If refund is ordered, on any ground, the complainant will be put to irreparable loss and injury.

It is submitted that the respondent company has paid towards GST/VAT/service tax. Hence, the respondent company need not refund the portion of amount to the complaint.

9. This is the stand taken by the developer in his objection statement filed by him. Of course the complainant has filed his complaint very much earlier to the completion date. As per the agreement itself the completion date would become March 2021 but this complaint is filed in the month of October 2019 only because intention expressed by the developer. The developer himself has sent a mail to the complainant on 27/02/2019 stating as under:

Devi
Reddy

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"Good afternoon,

We hereby take this opportunity to inform you that the management has taken a decision to exit from the project Melbourne Park; we are in progressive talks with the land owner and the prospective developer who will be taking over the project. Mr.Pradeep Narayan mentioned that he will address the meeting with the customers post our conclusion with the land owner & the developer. We request you to kindly bear with us until then.

We thank you all for your kind support and cooperation."

10. Again through email dated 08/04/2019 the developer has expressed his willingness as under:

Dear Home owners,

Further to our last communication and clarifications sought by you on the way forward to this project. We hereby want to clarify and put down in writing the following:

1. We have decided in our larger strategy of existing the residential business, we would like to exit from this project Melbourne Park.
2. We have identified a good developer who is well capitalized, will take over this project and execute it in line with what has been signed with each one of you and ensure our obligations with you will be fulfilled.
3. New incoming developer will also be settling our current lender Yes Bank in full and there would not be any borrowing on this project.

We shall keep you updated with the progress over the next 2-3 weeks. We look forward to your kind support to make a smooth transition with the new developer

Thanks & regards.

Pradeep Narayan

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11. Apprehended by the same the complainant has approached this authority. Surprisingly the developer has taken a different contention in the objection statement stating that the complaint is not maintainable as it is premature one. I have already referred the same which is factually correct also. The complainant will be entitled for refund of the amount only in case the developer has failed to complete the project within the due time as mentioned in the agreement. Here, the due date is not yet occurred, but the complaint is filed based upon the mail sent by the developer himself. Now the developer has taken a different stand by stating that the present complaint is not maintainable holds no water for the simple reason that he himself has given notice to the complainant to take further action. I would like to say that as per Sec.19(4) of the Act, the complainant is entitled to claim the refund of the amount in case the project has been abandoned for any reason. I would say that two responsibilities were on the shoulder of the developer. Firstly, he ought to have give explanation as to why he has sent mail to the complainant on 08/04/2019 and on 14/10/2019. Secondly, he ought to have give explanation what is the present status of his project as on the date of filing of his objections. Why I am referring this point because the complainant has alleged that the project has been stalled. Therefore, I have to respect the apprehension of the complainant in the absence of any proper explanation given by the developer. Mere by filing objections taken contrary to the mail dated 14/10/2019 will not absolve the developer from the liability. He is bound to return the amount as per Sec.18 of the Act. However, the amount paid towards the tax may not be included in the total amount payable to the complainant. Further, I would say that the developer is liable to return the

Denu
20/05/2020

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tax amount and he may collect the same from the concerned department since he is going to sell the same unit to some other person. Of course in this the complainant is going out of the project even before the completion date since the developer himself has expressed his willingness to change the developer. The mail sent by him is sufficient to hold that there is every chance of non-completion of the project. The apprehension of the complainant should be respected. In view of the above reasons the question of forfeiture does not arise. Further the stand taken by the developer that he will return the amount only the unit was sold to any third person, because the complainant who has paid amount and he cannot be made to wait for indefinite period. Here, the complainant has entered into agreement on 18/07/2016 but however, the complainant has swapped from 2.5 BHK to 3 BHK and therefore a new agreement was executed on 29/06/2018. But it is the case of the complainant that, the project work was stopped in October 2018 and in the month of March 2019. It means though the developer has taken two agreements but because of their non-completion of the project the cause has been arisen in favour of the complainant to invoke S.18 of the Act. As such the complaint is to be allowed.

12. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 24/10/2019. In this case the parties were present on 04/12/2019. After hearing arguments of the parties, the matter came up for judgment. In the meanwhile on account of

[Handwritten signature]
20/01/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
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natural calamity COVID 19 whole nation was locked down completely from 24/03/2020 till 16/05/2020 and as such this judgment could not be passed and as such it is with some delay. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191024/0004100 is hereby allowed.
- b. The developer is hereby directed to return Rs.20,30,896/-.
- c. The developer is hereby directed to pay interest @ 9% on the respect amount paid on the respective date till 30/04/2017 and @ 2% above MCLR of SBI commencing from 01/05/2017 till realisation. (MCLR be computed at the rate prevailing as on today)
- d. The developer shall pay Rs. 2,36,104/- to the complainant and recover the same from the department.
- e. The developer shall also pay Rs.5,000/- as cost of the petition.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 20/05/2020).

(K.Palakshappa)
Adjudicating Officer

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU**

DATED: 25TH DAY OF JUNE 2022

: CONCILIATORS PRESENT:

Sri: I. F. Bidari Judicial Conciliator

AND

Sri/Smt.: Preethi N Advocate conciliator

COMPLAINT NO: CMP/191024/0004100

Between

Mr. Ajeet Kumar Mall Complainant/s

AND

M/s. Nitesh Housing Developers Pvt. Ltd.,Respondent/s

(By: Authorized Person of the Respondent)

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, in terms of joint memo dated: 18.06.2022 filed during the pre Lok Adalat sitting on dated: 18.06.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed off in terms of the joint memo and joint memo is ordered to be treated as part and partial of the award.


Judicial conciliator


Advocate conciliator

Complaint No. 4100

25.06.2022

Before the Lok-Adalat

The above case is taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the matter is settled before the Lok-Adalat as per joint memo. The joint memo filed by the parties shall be part and partial of award/order.

The complaint stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

**BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY AT BENGALURU**

COMPLAINT NO: CMP/191024/0004100

Complainant : Mr. Ajeet Kumar Mall


Vs.

Respondent : M/s. Nitesh Housing Developers Pvt. Ltd.,
Nitesh Melbourne Park

JOINT MEMO

The complainant and the respondent in the above complaint jointly submit as under:

1. The complainant/allottee and the respondent/promoter after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Lok - Adalat.
2. The respondent/promoter has agreed to pay sum of Rs.25,50,000/- (Rupees Twenty Five Lakhs Fifty Thousand Only) to the complainant towards the full and final satisfaction of the complainant's claim in connection with the execution proceedings in the above said case and the allottee/complainant also agreed to receive the said amount towards full and final satisfaction of his claim in the execution proceedings in connection with the above case. The respondent promoter agreed to pay said amount of Rs. 25,50,000/- to the complainant on or before 20.06.2022 by way of demand draft and the same has been agreed by the complainant.
3. In view of the same, they jointly request this Lok - Adalat to dispose of the complaint as amicably settled before the Lok - Adalat.
4. Both the parties to the proceedings have no further claim whatsoever against each other in respect of the subject matter in connection with execution proceedings in the above case before any forum or court relating to the subject matter of the above complaint.






If there is any claim by either of the parties, they have agreed that the same be disposed off as settled by filing an appropriate memo in such cases.

5. Parties further request that this settlement be recorded in the National Lok - Adalat scheduled to be held on 25.06.2022.

Bengaluru

Date: 18.06.2022


Complainant/allottee


Authorized person of respondent



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ಕಡತ ಸಂಖ್ಯೆ Cmp. No: 4100

ಪುಟ ಸಂಖ್ಯೆ - 12 -

ವಿಷಯ Ajeet Kumar Mall

Nitesh Melbourne Park

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-4100

18.06.2022

As per the oral request of the complainant and Smt. Rekha Bhat, Authorized person of the respondent in the above case in connection with execution proceedings is taken-up for amicable settlement, in the National Lok Adalat to be held on 25.06.2022.

The complainant Sri. Ajeet Kumar Mall and Smt. Rekha Bhat, the Authorized person of the respondent present, in the pre-Lok-Adalat sitting held on 18.06.2022, the matter is settled in terms of joint memo dated: 18.06.2022. The settlement entered between the parties is voluntary and legal one and as per which the complainant has no further claims against the respondent whatsoever. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties in terms of above joint memo. The RRC/recovery warrant issued against the respondent in this case is hereby recalled and office is hereby directed to intimate about the RRC/recovery warrant in this case to the concerned DC. For consideration of joint memo and award, matter is referred to Lok-Adalat to be held on 25.06.2022.

Ajeet Kumar Mall

Rekha Bhat

18/6/22
Judicial Conciliator.

18/6/22
Advocate Conciliator.



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ಕಡತ ಸಂಖ್ಯೆ Comp. No: 4/100

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ವಿಷಯ Ajeet Kumar Mall

Nitesh Melbourn Park

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ಟಿಪ್ಪಣಿ ಮತ್ತು ಅದೇಶಗಳು

Date-20-06-2022.

Receiving Managers cheque being no: 186235
dated: 09/06/2022 for a sum of RS: 22,67,136/-
& another Managers cheque being no: 186281
dated: 20/06/2022 for a sum of RS: 2,82,864/-
in of HDFC bank, Kasturba Gandhi Marg,
Bengaluru Branch, before the pre-lokshala,
filing on 20/06/2022..

Ajeet Kumar
Ajeet Kumar Mall)

For NHDPL SOUTH PRIVATE LIMITED

Ajeet Kumar
Authorised Signatory

Authorised Signatory
of Respondent

20/6/22